**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 9247 OF 2007**

shri Shivram Ramchandra Sawant ...Petitioners

Versus

Shankar Hari Chavan ....Respondents

V.S.Kapse, Adv. for the petitioners.

S.M.Raikar Adv. for the respondents.

**CORAM: S.C.DHARMADHIKARI, J.**

**18th December, 2007.**

**P.C. :**

1. Heard learned counsel for the parties.

2. In my view, considering that the Regular civil Appeal was filed to challenge the order of the Trial Court and an application of stay was made requesting

that the execution proceedings be stayed till the decision of the Regular Civil Appeal, it was not necessary for the lower appellate court to have elaborately discussed the materials on record and render a finding which appears to me to be conclusive at the prima-facie stage.

3. The lower court's decree is directing the present petitioner/appellant to remove the encroachment to the extent indicated therein. All that was requested by the petitioner was that the decree be stayed so that the Appeal does not become infructous. It is not as if the direction to remove the encroachment being issued on 21.7.2007 and the Appeal having been filed within the period of limitation, that any consideration of delay and latches would come into consideration. Further by imposing appropriate conditions, the interest of both sides could have been protected.

4. In such circumstances, it is directed that the decree of the Trial court is stayed till the hearing and final disposal of the Appeal, which is preferred by

the present petitioner subject to the petitioner filing an Undertaking in the lower Appellate Court in the following terms :-

(a) that the petitioner/appellant if unsuccessful in the Appeal would remove the encroachment and restore the road to its original width, as directed by the Trial Court within a period of three months from the date of the disposal of the Appeal.

(b) that insofar as the portion which is subject matter of Appeal is concerned, the petitioner and none other is in possession thereof.

(c) that no third party rights would be created in respect of the portion which is subject matter of the suit.

(d) The Undertaking to be filed within a period of 15 days from today.

5. Considering the controversy involved, and the age of the parties, the lower Appellate Court to endeavour

and dispose off the Appeal as expeditiously as possible and by the end of October 2008. The lower Appellate Court to dispose off the Appeal on its own merits and in accordance with law uninfluenced by the observations made in the impugned order, so also, the protection granted by this court.

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